

**REMARKS**

**I. Amendments to the Claims**

By the foregoing amendments to the claims, claims 7-9, 12, 13 and 15 have been amended, claims 1-6 and 14 have been canceled, and new claims 17 and 18 have been added.

In particular, claims 7 and 8 have been amended to recite "an herbal extract which is obtained by extracting *Houttuynia cordata* and *Rubus coreanus* with water or organic solvents as an active ingredient and at least one selected from the group consisting of pharmaceutically acceptable carrier, excipient and diluent, wherein the herbal extract has inhibitory activities against the degranulation and histamine release of mast cells." These amendments are supported throughout the application as originally filed.

Claims 7 and 8 have been further amended by deleting the term "prevention."

Claim 7 has also been amended to recite that the composition comprises an additional component, namely a pharmaceutically acceptable carrier, excipient, or diluent. Support for the additional component can be found at least at page 11, lines 21-24 of the present specification.

In addition, withdrawn claims 12 and 13 have been amended to depend from claim 7 rather than from claim 1.

Support for the ratios recited in new claims 17 and 18 can be found at least in original claim 2.

Additional amendments to the claims have also been made to clarify the claim language, for consistency, and to bring the claims into better conformance with U.S. patent practice. These amendments are merely editorial in nature and are not intended to change the scope of the claims or any elements recited therein.

The amendments to the claims, including cancellation of claims, have been made without prejudice or disclaimer to any subject matter recited or canceled herein. Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new matter has been added, and entry of the foregoing amendments to the above-identified application are respectfully requested.

**II. Response to Claim Rejections Under 35 U.S.C. § 112, First Paragraph**

At pages 2-4 of the Office Action, claims 7 and 8 have been rejected under 35 U.S.C. § 112, first paragraph, as purportedly lacking enablement.

In particular, the Examiner has acknowledged that the specification enables a pharmaceutical composition for *treating* allergic diseases. However, the Examiner has further stated that the specification does not enable a pharmaceutical composition for *preventing* allergic diseases.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, the claims have been amended as described above. In particular, claims 2-4 have been canceled, rendering the rejection moot as to these claims. Furthermore, claims 7 and 8 have been amended by deleting the term "prevention."

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

### **III. Response to Claim Rejections Under 35 U.S.C. § 112, Second Paragraph, and 35 U.S.C. § 101**

At page 5 of the Office Action, claims 4-6 have been rejected under 35 U.S.C. § 112, second paragraph, as purportedly being indefinite; and under 35 U.S.C. § 101 as purportedly directed to unpatentable subject matter.

To expedite prosecution in the present application, and not to acquiesce to the Examiner's rejection, claims 4-6 have been canceled. Thus, this rejection is moot.

### **IV. Response to Claim Rejections Under 35 U.S.C. §§ 102 and 103**

**A.** At page 6 of the Office Action, claims 1, 3-11 and 14-16 have been rejected under 35 U.S.C. § 102(a) as purportedly anticipated by KR 2003/057509 (Su Jeong).

In particular, the Examiner has stated that the '509 publication discloses an herbal extract comprising *Houttuynia cordata*, *Mori folium*, and *Fructus rubi* (the unripened fruit of *Rubus coreanus*). According to the Examiner, the reference extract comprises the same ingredients as the present composition, and thus inherently provides the same functional activity.

**B.** At pages 7-8 of the Office Action, claims 1-11 and 14-16 have been rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over KR 2003/057509.

Specifically, the Examiner has acknowledged that the reference does not teach the ratio recited in claim 2. However, it is the Examiner's position that the recited ratio would have been obvious to a person of ordinary skill in the art at the time of filing.

The rejections under 35 U.S.C. §§ 102 and 103 are respectfully traversed, for at least the following reasons.

Applicants respectfully submit that the reference of Su Jeong does not in fact teach an herbal extract comprising *Houttuynia cordata*, *Folium Mori*, and *Rubi Fructus* (unripened fruit of *Rubus coreanus*) as active ingredients. Instead, Su Jeong teaches that after *Houttuynia cordata*, *Folium Mori*, and *Rubi Fructus* etc. are fermented, and extracted in water, pees[sic] are dipped in this fermented mixture and stabilized with drying (see page 2, lines 13-18, of the reference). That is, the reference discloses fermented pees[sic] which are dipped and fermented in an extract of fermented herbs such as *Houttuynia cordata*, *Folium Mori*, and *Rubi Fructus*. The reference does not teach or suggest that the herbal extract is a health food and a crude drug, but rather that the fermented pees[sic] are a health food and a crude drug. Therefore, the herbal extract could not qualify as a pharmaceutical, as recited in the present claims. In particular, the reference does not teach or suggest a composition comprising the herbal extract recited in the present claims in combination with a pharmaceutically acceptable carrier, excipient, or diluent.

Furthermore, “fermentation” is a biochemical process in which enzymes or microorganisms such as bacteria, yeasts, or moulds are used to break down an organic compound, usually a carbohydrate, in the absence of oxygen (e.g. the conversion of sugar into alcohol). Therefore, the reference extract of fermented herbs comprises different ingredients and has different functional effects as compared with the herbal extract recited in the present claims.

Accordingly, Applicants respectfully request reconsideration and withdrawal of these rejections.

**CONCLUSION**

This response is made without prejudice or disclaimer to any non-elected subject matter, and Applicants reserve the right to file one or more continuation and/or divisional applications directed to any non-elected subject matter.

From the foregoing, further and favorable action in the form of a Notice of Allowance is respectfully requested and such action is earnestly solicited.

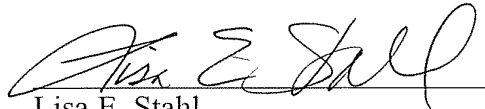
In the event that there are any questions concerning this amendment or the application in general, the Examiner is respectfully requested to telephone the undersigned so that prosecution of the application may be expedited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: February 24, 2009

By:

A handwritten signature in black ink, appearing to read "Lisa E. Stahl", written over a horizontal line.

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